

REMARKS

In accordance with the foregoing, the specification and claims 1, 2, 5, 10, 11, 12, 14, 15, and 16 have been amended with claims 17-22 being added. No new matter is being presented, and approval and entry of the amendments are respectfully requested.

Claims 1-22 are pending and under consideration.

EXAMINER INTERVIEW:

The undersigned attorney wishes to thank Examiner Daniel Cyr for the courtesy interview granted in this application. During the course of the interview, the features of selectably writing data to a data carrier were discussed. The remarks set forth below are taken in view of the examiner interview.

CLAIM OBJECTIONS:

The claims have been amended in accordance with the helpful suggestions of the examiner to generally address the outstanding claim objections.

Claim 3 sets forth the terms "one of a kind of one of a kind and price of the dish or drink." Claim 4 sets forth the term "one of a measured weight and a price corresponding to the measured weight..." The objection to claims 3 and 4 is respectfully traversed. Markush claim practice is specifically allowed by the M.P.E.P. §2173.05(h).

Reconsideration and withdrawal of the outstanding claims objection are respectfully requested.

REJECTION UNDER 35 U.S.C. §103(a):

Claims 1-3, 5-10, and 12-16 stand rejected under 35 U.S.C. §103(a) as being obvious over Shimamura et al., U.S. Patent No. 5,522,509. Claim 4 stands rejected under 35 U.S.C. §103(a) as being obvious over Ehrat, U.S. Patent No. 3,836,755. Claim 11 stands rejected under 35 U.S.C. §103(a) as being obvious over Shepley, U.S. Patent No. 5,478,989. In view of the amendment set forth above and the remarks set forth below, the outstanding obviousness rejection is respectfully traversed.

By way of review, Shimamura et al. relates to a resonance tag that may be affixed or buried within a plate for communicating data. See, e.g., Shimamura et al. at col. 4, ln.8-10. Each resonance tag has a corresponding fixed ID number, which may not be modified. Shimamura et al. fails to disclose a re-writable tag. Ehrat is relied upon by the Examiner as disclosing a measuring means. Shepley is relied upon as disclosing a bar code identification system. Likewise, Shepley does not disclose that the bar codes are re-writable.

On the other hand, the subject application particularly sets forth that the data carrier is re-writable. The Office Action asserts that a re-writable feature is "notoriously well known." See Office Action at page 3, line 13. Further, the Office Action provides "Official Notice" that bar codes may be re-writable. These assertions are respectfully traversed.

The personal knowledge of the Examiner when used as a basis for a rejection must be supported by an affidavit as to the specifics of the facts of that knowledge when called for by applicant (see 37 C.F.R. § 1.104(d)(2)). In view of the above, it is respectfully requested that the Examiner supply a reference in support of his position, or that the Examiner provide an affidavit in support.

Claims 1-3, 5-10, and 12-16 stand rejected over a single reference. To support a finding of obviousness based on a single reference, the single reference must suggest the desirability of modification as needed to accomplish the claimed invention. In other words, the mere fact that a prior art reference could be modified does not make the modification obvious unless the reference suggests the desirability of the modification. See In re Gordon, 733 F.2d 900, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984); Schneck v. Gordon, 713 F.2d 782, 218 U.S.P.Q. 698 (Fed. Cir. 1984); and Cooper v. Ford, 748 F.2d 677, 223 U.S.P.Q. 1286, 1288 (Fed. Cir. 1984). It is respectfully asserted that there is no motivation from the reference of Shimamura et al. to change from a passive antenna identifier system to the now-claimed active system with re-writable data storage. Shimamura et al. therefore teaches away from the now-claimed active system.

The claims now particularly emphasize use of a selectably re-writable data carrier. The system of Shimamura et al. provides no capability for selection or data storage. On the other hand, the presently claimed invention provides for the data carrier to be selectively re-written. This feature is important to the present invention, as set forth on page 11, line 13-20, such that

data carrier 12 may be re-written every time depending upon kind size of dish or not-rewritten as long as the menu has not changed.

Reconsideration and withdrawal of the outstanding obviousness rejections are respectfully requested.

NEW CLAIMS 17-22:

New claims 17-22 particularly set forth a reading unit reading data in a non-contact state from a selectively re-writable data carrier and a container including tableware and a selectively re-writable data carrier. These features are neither taught nor suggested by the prior art.

Approval, entry and allowance are respectfully requested.

CONCLUSION:

Accordingly, there being no other outstanding objections or rejections, it is respectfully submitted that the application is in condition for allowance which action is earnestly solicited.

If any further fees are required in connection with the filing of this Amendment, please charge same to our Deposit Account No. 19-3935.

Respectfully submitted,

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